

► **PRESIDENT**

Hon. Quinn E. Benson (8)
227 W. Michigan Ave.
Kalamazoo, MI 49007
269.383.8640 (dd); Fax 269.383.8845

► **PRESIDENT-ELECT**

Hon. Phyllis McMillen (51)
5100 Civic Center Drive
Waterford, MI 48329
248.618.7632; Fax 248.674.4476

► **VICE PRESIDENT**

Hon. Kirk Tabbey (14A-2)
415 W. Michigan Ave.
Ypsilanti, MI 48197
734.484.6619 (dd); Fax 734.484.6600

► **SECRETARY**

Hon. Donna Robinson Milhouse (36)
421 Madison Avenue, Suite 3072
Detroit, MI 48226
313.965.5114; Fax 313.967.7513

► **TREASURER**

Hon. Susan Moiseev
26000 Evergreen Road
Southfield, MI 48076
248.796.5820; Fax 248.796.5815

► **PAST PRESIDENT**

Hon. Tina Brooks Green (34)
11131 S. Wayne Road
Romulus, MI 48174
734.941.4410; Fax 734.941.3614

► **REGIONAL DIRECTORS**

Hon. Roger J. La Rose (32A)
313.343.2590; Fax 313.343.2594

Hon. Michael J. Nolan (60)
231.724.6358; Fax 231.724.3489

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Hon. Patricia A. Morse
(46 Circuit Court Trial Division)
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231.922.4583; Fax 231.922.4454

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BENCHMARKS

Hon. Carol Husum (8)
269.383.8620; Fax 269.384.8334

GOVERNMENT LIAISON

Hon. Kathleen J. McCann (16)
734.466.2513; Fax 734.522.6744

JUDICIAL BENEFITS

Hon. Kenneth Post (58)
616.662.3100 Ext.2 Ex.1
Fax 616.669.2950

JUDICIAL RESPONSE

Hon. John L. Conover (67A)
810.653.8709; Fax 810.658.8946

LEGISLATIVE COMMITTEE

Hon. Brian A. Oakley (34)
734.941.7034; Fax 734.941.3614

PROGRAM COMMITTEE

Hon. Ronald W. Lowe (35)
734.781.0107; Fax 734.781.0110

PUBLIC INFORMATION

Hon. Louise Alderson (54A)
517.483.4421; Fax 517.483.4108

RULES COMMITTEE

Hon. Richard Hammer (21)
734.793.1682; Fax 734.793.1681

TECHNOLOGY INFORMATION

Hon. Donald Passenger (61)
616.632.5678; Fax 616.632.5681

Michigan District Judges Association



August 24, 2005

Representative Van Regenmorter
House Office Building
Lansing, Michigan

Re: House Bills 4796, 4797 4799 and 4800

Dear Representative Van Regenmorter;

The Michigan District Judges Association has met and had extensive discussions concerning the above bills. These proposed bills are a response to a proposal submitted by Attorney General Cox (the Cox Plan). The Cox Plan is the result of a survey of 15 jurisdictions that showed that most preliminary examinations were waived. The cases would then be transferred to circuit court with or without a plea agreement. The defendant is then arraigned on the felony information. The survey showed that many hours of police time were wasted because police officers appeared ready to testify, only to have the prelim waived. MDJA agrees that many prelims are waived with or without a plea agreement. Saving the time of police, witnesses and victims is a laudable goal. We would submit that the right to a preliminary examination is a very important substantive procedural step in the criminal justice system. Defendants should not be deprived of this right because the maximum sentence falls below the arbitrary term of 10 years in prison. We would submit that the Cox Plan considers only the potential timesavings in district court. It does not consider its impact in other areas of the criminal process, nor consider other alternatives that could achieve the same goal without eliminating the right to prelims in a number of felony cases.

1) There are a number of valid reasons to have a preliminary examination:

- a. The elimination of the right to a preliminary examination would force the defendant to stand trial without the opportunity to test the charges against him. This would amount to trial by police report.

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- b. A pre-exam conference is held in many district courts. This procedure gives the prosecution, the defense and other people involved an opportunity to discuss all aspects of the case. It allows the defendant and defense attorney to make an informed decision about the case, review any plea offer and compute the potential sentence, based upon the sentencing guidelines. If the plea offer is refused, the defendant could still waive the prelim. This happens in many cases. The presence of the police officers would not be required at this procedure. The fact that a large number of prelims are waived is not evidence that they are not needed, but shows that a great deal is accomplished at that stage of the proceedings.
- c. In many jurisdictions the prosecuting attorney keeps the plea offer open until the time of the arraignment in circuit court. This gives the defendant and defense counsel an opportunity to review the police report, conduct further investigation and make an informed decision to accept or reject the plea. Again, no officers would waste their time. They would be on the street.
- d. There are times when the prosecution or the defense is concerned that witnesses will not be available for trial, or might change his/her testimony for a variety of reasons. The prelim gives one side or the other an opportunity to preserve testimony that otherwise would be lost.
- e. The transcript from a preliminary examination would give the circuit court valid information to decide pretrial motions, including motions regarding bond.
- f. The procedures in district court result in a large number of cases and issues being resolved that otherwise would have to be handled in circuit court.
- g. The Cox Plan is based upon the assumption that most of the felonies for which the maximum penalty is under 10 years, would result in the defendant being placed on

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probation. Under the guidelines probation or a jail term followed by probation might well be imposed. This reasoning totally discounts the fact that a felony is a felony. Once a person is a convicted felon and on probation, any future transgression could result in prison. Also, the penalties for any future felony charges could be enhanced because of the prior felony conviction. Finally, there are many consequences that follow such a conviction – driving, voting, carrying a weapon, and other privileges or rights may be revoked. A felony conviction is a serious event whatever the initial penalty might be.

What would the impact of the passage of this bill be upon the operation of the criminal justice system?

- a. All the issues that are now resolved in district court through the preliminary examination would have to be resolved in circuit court including any issues regarding bond.
- b. Defense attorneys would choose to go to trial in many cases because they could not advise their clients to accept a plea offer based upon a police report and the lack of any opportunity to listen to the testimony of the witnesses against the defendant.
- c. Defendants could spend more time in jail because no examining magistrate would have an opportunity to intelligently review the bond set by the arraigning judge prior to circuit court arraignment.
- d. All the officers would have to be subpoenaed and wait for trial in the circuit court instead of in district court for the preliminary examination. This would certainly defeat the goal of more cops on the street.
- e. In district court, prelims must be scheduled within 14 days. As stated above, the vast majority of cases are resolved or serious plea discussions are held at the prelim resulting in a waiver of the prelims. If most

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prelims were eliminated, there would be no plea discussions until the pretrial in circuit court. This could extend the time within which a person was in jail awaiting trial by several weeks or months and, with jail overcrowding, could put more criminals on the street.

We would strongly support extending the time for the completion of the preliminary examination to 21 days for all felonies as an alternative to the Cox Plan. A pre-exam conference would be held during those 21 days to allow all parties to thoroughly explore resolving the case. This would not involve the presence of any officers. The goal of having more officers on the street would be met. The benefits of having the prelim available and a pre-exam conference conducted would still be received.

We thank you for considering our thoughts and recommendations when acting on the proposed legislation.

Very truly yours

Quinn E. Benson
President